

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANNE WEST, TOM BROWN,

Civil Action No. 2:19-cv-0501-AJS

Plaintiffs,

LEAD CASE

v.

DOCUSIGN, INC.,

Defendant.

---

KAREN CLARK,

Civil Action No. 1:19-cv-00135

Plaintiff,

MEMBER CASE

v.

ALIBRIS, INC., and DOES 1-5,

*Electronically Filed*

Defendant.

**DEFENDANT ALIBRIS, INC.’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

NOW COMES Defendant, Alibris, Inc. (“Defendant”), by and through its attorneys, and pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), move this Honorable Court to dismiss Plaintiff’s Complaint because this Court lacks subject matter jurisdiction and Plaintiff’s Complaint does not allege a cognizable theory of liability under Title III of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (“ADA”).

1. Based on the arguments advanced in Defendant’s Memorandum of Law, Defendant’s website-only business is not considered a place of public accommodation, and dismissal of Plaintiff’s Complaint is proper under 12(b)(6) because Plaintiff does not have a cognizable theory of liability under the ADA.

2. In addition, Plaintiff’s Complaint should be dismissed under 12(b)(1) because this Court lacks subject matter jurisdiction facially and factually because Defendant’s website-only

does not present a sufficient nexus to provide subject matter jurisdiction and the allegations of non-compliance with the ADA have been addressed and are moot.

3. Arguments and authority in support of this Motion are set forth in Defendant's Memorandum of Law, filed contemporaneously, and are incorporated herein by reference.

WHEREFORE, for the reasons stated above, Movant requests that this Honorable Court enter judgment in favor of Defendant., Alibris, Inc., dismissing Plaintiff's Complaint with prejudice, and for such other and further relief as this court deems equitable and just.

Dated: August 5, 2019.

Respectfully submitted,

/s/ Thomas J. Nitschke, Esq. \_\_\_\_\_  
Thomas J. Nitschke, Esq.

ARDC No. 6225740

Blaise and Nitschke, P.C.  
123 N. Wacker Dr., Suite 250  
Chicago, IL 60606  
T: (312) 448-6602  
F: (312) 803-1940  
Email: [tjnitschke@blaisenitschkelaw.com](mailto:tjnitschke@blaisenitschkelaw.com)  
*Attorney for Defendant Alibris, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Dismiss Plaintiff's Complaint was served upon all counsel of record via the Court's ECF electronic filing system this 5<sup>th</sup> day of August, 2019.

Respectfully submitted,

/s/ Thomas J. Nitschke, Esq. \_\_\_\_\_  
Thomas J. Nitschke, Esq.

ARDC No. 6225740

Blaise and Nitschke, P.C.  
123 N. Wacker Dr., Suite 250  
Chicago, IL 60606  
T: (312) 448-6602  
F: (312) 803-1940  
Email: tjnitschke@blaisenitschkelaw.com  
*Attorney for Defendant Alibris, Inc.*